conditional sale fixes the repairer with notice that a valid lien has already been acquired and no injustice results if he is confined to a personal action against the mortgagor.

PARTNERSHIP — RIGHTS OF PARTNERS *INTER SE* — FIDUCIARY RELATION AFTER DISSOLUTION. — A partnership, composed of A and B, was offered the timber rights in certain realty, and cut and took possession of some of the timber. On dissolution, A assigned his rights in all partnership timber to B, who continued the business. A then purchased the timber rights in this same property for his son, who knew all the circumstances. The son sues B for conversion of the timber. *Held*, that the defendant have judgment. *Carey* v. *Wilsey*, 185 Pac. 600 (Wash.).

The court assumed that there was no binding contract made by the partnership for the timber, and rested its decision on principles of estoppel. But assuming that there was no contract, the fiduciary relation between partners would seem to be a sounder basis for the result. Partners owe a duty to deal openly and fairly with each other in all matters touching their business. That this duty exists during the continuance of the partnership is certain. *Hurst* v. *Brennen*, 239 Pa. St. 216, 86 Atl. 778; *Deutschman* v. *Dwyer*, 223 Mass. 261, 111 N. E. 877. There seems to be the same duty as to dealings in the formation of the partnership. *Selwyn & Co.* v. *Waller*, 212 N. Y. 507, 106 N. E. 321; *Bloom* v. *Lofgren*, 64 Minn. 1, 65 N. W. 960. And so, as to transactions in contemplation of dissolution. *Knapp* v. *Reed*, 88 Neb. 754, 130 N. W. 430; *Mitchell* v. *Read*, 84 N. Y. 556. It is improper to dissolve the partnership for the purpose of excluding certain partners from expected profits or for the purpose of competing with the partnership for a particular contract. *Stern* v. *Warren*, 185 App. Div. 823, 174 N. Y. Supp. 30; *Williamson* v. *Monroe*, 101 Fed. 322. Where a partnership has been dissolved by the death of one partner, the survivor is under certain duties and disabilities peculiar to fiduciary relations. *Western Securities Co.* v. *Atlee*, 168 Iowa, 650, 151 N. W. 56; *Rowell* v. *Rowell*, 122 Wis. 1, 99 N. W. 473. It would seem that on theory there should be a duty of fair and open dealing, after the dissolution, as to matters relating to prior joint business. At least one recent case has taken this view. *Stevenson & Sons, Ltd.* v. *Aktiengesellschaft*, [1918] A. C. 239.

SEARCHES AND SEIZURES — VALIDITY OF JUDICIAL ORDER REQUIRING PRODUCTION OF PAPERS DISCOVERED BY UNLAWFUL SEARCH. — In a criminal prosecution by the United States, the indictment was framed on information obtained from papers seized in an unlawful search of the premises of the defendants at the instigation of the district attorney. Before trial the government returned the papers, but at the trial a subpœna was served, ordering the defendants to produce the same papers. The defendants refused on the ground, *inter alia*, that the order violated the Fourth Amendment and they were attached for contempt. *Held*, that they were not guilty. *Silverthorne Lumber Co.* v. *United States*, U. S. Sup. Ct. No. 358, October Term, 1919.

The admission as evidence of testimony obtained in violation of a privilege is error, for the law provides no other means to protect the privilege. *People* v. *Mullings*, 83 Cal. 138, 23 Pac. 229; *Hearne* v. *State*, 50 Tex. Crim. Rep. 431, 97 S. W. 1050. But courts admit as evidence documents obtained by police officials or private individuals, even if obtained in violation of the constitutional guarantees against unreasonable searches and seizures, the law supplying other legal and equitable remedies against the wrongdoers in such cases. *Adams* v. *New York*, 192 U. S. 585; *Williams* v. *State*, 100 Ga. 511, 28 S. E. 624; *Gindrat* v. *The People*, 138 Ill. 103, 27 N. E. 1085. To this general rule the Supreme Court seems to make two exceptions. A refusal to return papers unlawfully seized is reversible error, if the application was made before

trial. *Weeks* v. *United States*, 232 U. S. 383. And in the principal case the court places its decision on the ground that a court cannot compel the production of papers if the existence thereof has been revealed to the court as a result of information gained from papers unlawfully seized. Since the particular papers seem to have been incriminatory, a simpler ground for the decision seems to be that the privilege of the defendants against self-incrimination would be violated by the order in question. *Boyd* v. *United States*, 116 U. S. 616.

STATUTE OF FRAUDS — SALES OF GOODS, WARES, AND MERCHANDISE — CHECK AS PART PAYMENT. — The plaintiff made an oral contract with the defendant for the sale of lambs which were worth more than $50 and gave the defendant a check. There was no agreement that the check should be absolute payment. The defendant repudiated the contract and destroyed the check. The plaintiff sued for damages. The defense was the Statute of Frauds. *Held*, that the contract is unenforceable. *Gay* v. *Sundquist*, 175 N. W. 190 (S. D.).

Whether a negotiable instrument is given in absolute or in conditional payment of the debt is determined by the intent of the parties. *Ely* v. *James*, 123 Mass. 36; *McLure* v. *Sherman*, 70 Fed. 190. In the absence of any express understanding, a negotiable instrument is in most states presumed to be conditional payment; *i. e.*, valid payment, subject to the condition subsequent that if it is not paid when duly presented the old debt revives. *Burkhalter* v. *Second National Bank*, 42 N. Y. 538; *Holmes* v. *Briggs*, 131 Pa. St. 233, 18 Atl. 928. In others the presumption is one of absolute payment. *O'Conner* v. *Hurley*, 147 Mass. 145. As to whether a negotiable instrument is part payment under the Statute of Frauds, in the absence of expressed intent, the presumption of absolute payment seems preferable — giving a negotiable instrument is itself an overt act easily proved. But in a jurisdiction where conditional payment is presumed, if the instrument is duly presented but not paid at maturity, it would seem that the statute is not satisfied. But since part payment must be contemporaneous with the bargain and there is a valid part payment even in these jurisdictions, if the instrument is paid when presented, the condition must be a condition subsequent. *Hunter* v. *Wetsell*, 84 N. Y. 549; *Case* v. *Kramer*, 34 Mont. 142, 85 Pac. 878. Accordingly if the drawer stops payment, thus preventing the performance of the condition subsequent, there is a valid part payment. *Hessberg* v. *Welsh*, 147 N. Y. Supp. 44. The same should be true if the instrument is not duly presented. *Contra*, *Groomer* v. *McMillan*, 143 Mo. Ap. 612, 128 S. W. 285; *Johnson* v. *Morrison*, 163 Mich. 322, 128 N. W. 243. Therefore, though in line with the cases just cited, it seems that the principal case cannot be defended on principle, whether the check is presumed to be absolute or conditional payment.

TAXATION — INHERITANCE TAX — COLLECTION AND ENFORCEMENT — PERSONAL ACTION IN ANOTHER STATE AGAINST THE BENEFICIARIES. — A resident of Colorado died in New York leaving no property in Colorado but a great deal of personalty in New York. Colorado served the New York beneficiaries, by publication, with notice of assessment proceedings in a Colorado court which by statute had jurisdiction to proceed as in an action *in rem*. No one appeared, but the court issued its order that the tax had been assessed. The state of Colorado then brought an action in New York against the beneficiaries. The Supreme Court dismissed the complaint. On appeal, *held*, that the judgment be reversed. *Colorado* v. *Harbeck*, 179 N. Y. Supp., 510 (App. Div.).

For a discussion of this case, see NOTES, p. 840, *supra*.